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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 27th December 1957

S.R.O. 75.—Whereas the election of Shri Gajadhar Somani, son of Shri Hazari Mal Somani, resident of Shrinivas House, Wandley Road, Bombay No. 1, as a member of the House of the People from the Dausa Parliamentary Constituency of that House, was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Fateh Singh, son of Shri Narain Singhji, resident of Sanganeri Gate, Shankotra House, Subzimandi, Jaipur City;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, **Act, the Election Commission hereby publishes the said order of the Tribunal.**

BEFORE THE ELECTION TRIBUNAL, JAIPUR

PRESENT:—Shri J. C. Jacob.

ELECTION PETITION NO. 370 OF 1957.

Shri Fateh Singh, son of Shri Narain Singh, resident of Sanganer Gate, Shankotra House, Subzimandi, Jaipur City—Petitioner.

Vs.

Shri Gajadhar Somani, son of Shri Hazari Lal Somani, resident of Shrinivas House, Wandley Road, Bombay No. 1.—Respondent.

Shri R. C. Sharma, Advocate—for the petitioner.

Shri C. L. Agarwal, Advocate—for the respondent.

JUDGMENT

Petitioner Fateh Singh seeks to set aside the election of respondent Gajadhar Somani to the House of People from Dausa constituency on the following grounds:—

- That the Returning Officer had improperly rejected the nomination paper of one Shri Narain on the ground that against column No. 2 the parliamentary constituency in which the proposer was enrolled was not mentioned.

2. That the respondent himself and through his agents had committed corrupt practice by giving a bribe of Rs. 5,000/- to one Shri Laloo Lal Kanungo for withdrawing his nomination paper and that a large number of electors were paid Re. 1/- each by the agents of the respondent and sweets were also distributed at every polling station to the electors.
3. That the respondent and his agents unduly influenced the electors by obtaining 'Fatwa' from Mallas that if the Muslim voters did not vote for him they will be sent to Pakistan and will subject to the wrath of 'Allah'.
4. That the respondent and his agents procured vehicles for the conveyance of electors to the polling stations.
5. That the respondent exceeded the prescribed maximum limit of expenditure and lodged a false return of such expenses.
6. That the respondent and his agents falsely propagated that the petitioner had withdrawn from the contest.

The respondent denied and repudiated the allegations regarding corrupt practice and also pleaded that the nomination of Sri Narain was rightly rejected on account of the omission to specify the parliamentary constituency and also the assembly constituency in which the proposer was enrolled as a voter. It was further pleaded that the said nomination paper was also defective for want of similar particulars about Sri Narain himself. The respondent also questioned the genuineness of the signatures of the proposer on this nomination paper.

Before issues were framed the petitioner gave up his allegations regarding payment of Re. 1/- to the voters and the 'Fatwa' by the Mallas and made an application for the amendment of paras 4(c) and 9 of the petition in order to give further details of the corrupt practices regarding distribution of sweets to voters and propagation of false statement about petitioner's withdrawal from the contest. This request was allowed by order dated 28th September, 1957, on condition that he paid Rs. 50/- as costs to the respondent. The petitioner failed to pay the costs and so he was not allowed to amend the particulars of the said corrupt practice.

Following nine issues were framed in the case:—

1. Did the petitioner commit corrupt practice of bribery as alleged in para 4(1)(a) of the petition?
2. Did the respondent and his agents procure vehicles for the conveyance of electors to the polling stations and were the electors carried in those vehicles as alleged in para 6 and Schedule III?
3. Did the respondent exceed the minimum prescribed limit of election expenses and did he furnish false return of expenses in respect of items detailed in Schedule IV of the petition?
4. Has the result of the election been materially affected by the commission of the aforesaid corrupt practices, or any of them?
5. Was the nomination of Sri Narain improperly rejected as alleged in paras 10 and 11 of the petition?
6. Whether the signatures of the proposer on the nomination paper of Sri Narain are not genuine and could the nomination paper be rejected on that ground also?
7. Was the nomination paper of Sri Narain defective for omission to specify the parliamentary and assembly constituency in which Sri Narain was enrolled as a voter and could his nomination be rejected on that ground also?
8. Is the respondent entitled to special costs?
9. To what relief is the petitioner entitled?

As the allegations in para 4(c) of the petition regarding distribution of sweets to voters and in para 9 regarding propaganda of a false statement by the respondent and his agents about the petitioner's withdrawal from the contest were vague no issues were framed regarding them.

When the case came up for evidence the petitioner's witnesses were not present, and after giving him a further opportunity his case was closed. At that stage an application was presented on behalf of one Sarju Das that the petitioner had made a bargain with the respondent and was not taking any interest in the prosecution of his case and as there was already material on the record indicating that corrupt practices were committed he (Sarju Das) may be substituted in place of the petitioner and may be allowed to produce evidence substantiating the allegations regarding corrupt practices.

The learned counsel for Sarju Das contended that a perusal of Schedule 4 of the petition would show that evidence regarding bringing motor vehicles from Bombay, Kotah, Kuchaman, Jamnagar, and Delhi by the respondent or on his behalf could be obtained from the firms from where they were obtained. Similarly evidence regarding patrol bills and payments of amounts for advertisements to daily paper 'Fashtroo' and other expenses of propaganda work could be obtained from the firms and printing presses concerned so that it may be established that the respondent had failed to show several items of expenditure in his return of expenses. The learned counsel for the applicant, at the time of arguments, conceded that as the petitioner had not withdrawn the applicant could not be substituted in his place but he urged that the Tribunal could under its inherent powers summon and examine witnesses *suo moto* as empowered by S. 92 of the Representation of the People Act, 1951.

On the other hand it was argued on behalf of the respondent that Sarju Das cannot be allowed to have any say in the matter because he is not a party. It was further argued that there was no material on the record which could *prima facie* show that any corrupt practice was committed and it was not for this Tribunal to make a fishing enquiry about vague allegations of the petitioner and lastly, there was nothing to bind down the present applicant to bear the expenses of calling witnesses from Bombay, Delhi, Saurashtra and other places.

I am of opinion that the request of applicant Sarju Das cannot be accepted. It has been already conceded, and rightly too, that he cannot be substituted in place of the petitioner as he had not withdrawn, nor he could be allowed to lead evidence when he cannot be made a party. The contention of the applicant that there was ample material on the record indicating a *prima facie* case about the alleged corrupt practices has also no force. There are no documents on the record in support of the allegations of the petitioner regarding the alleged corrupt practices. If this court were to hold an enquiry now it would be necessary first to issue notices to the various firms to produce their accounts and vouchers and thereafter to obtain proof that the expenditure pertaining to the vehicles detailed in Schedule 4 was incurred by the respondent. I do not think any such procedure is envisaged by S. 92. It is not the duty of this Tribunal to go out of its way to find out from third parties if there are any documents in their possession which might involve any of the parties. I am, therefore, unable to accept the request of Sarju Das to initiate an enquiry *suo moto* about the allegations regarding corrupt practices specially when there is no material on the record to support them.

My findings on the issues are as under:

Issues Nos. 1 to 4:—

All these issues relate to the allegations regarding corrupt practices and the burden of proof was on the petitioner. Since there is no evidence in support of these allegations these issues are decided in the negative.

Issues Nos. 5 and 7:—

The nomination paper of Sri Narain which is an admitted document shows that in column No. 2 of the portion to be filled in by the proposer, the only entry is "Serial No. 9, Part 39", and the order of the Returning Officer is as under:—

"I examined the nomination paper filed by Shri Sri Narain from Dause House of the People constituency.

The name of the constituency where the proposer is a voter has not been given against column No. 2 of the nomination Form. It is, therefore, impossible to satisfy the entries in terms of sub-section 4 of Section 33 of the Representation of the People Act, 1951.

Hence the nomination paper rejected."

Now it is to be seen whether the Returning Officer had improperly rejected this nomination paper. Sub-section (4) of S. 33 of the Representation of the People Act, 1951 lays down that on the presentation of a nomination paper, the Returning Officer shall satisfy that the names and electoral roll numbers of the candidate and

his proposer as entered in the nomination paper are the same as those entered in the electoral roll. Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, further lays down that every nomination paper presented under Sub-section (1) of S. 33 of the Representation of the People Act shall be completed in such one of the forms 2A to 2F as may be appropriate. In the present case the appropriate form is 2A. At the foot of this form there are clear directions as to what particulars should be given in columns No. 2 and 5. According to these directions the following particulars should be given in columns No. 2 and 5, regarding the proposer and the candidate:

- (i) the name of the parliamentary constituency;
- (ii) the name of the component assembly of electoral college constituency in the electoral rolls of which the name of the proposer or the candidate as the case may be, has been entered;
- (iii) the serial number of the part of the electoral roll in which such entry occurs; and
- (iv) the serial number of the entry in that part.

Thus it is the duty of the proposer to give the name of the parliamentary constituency as well as the assembly constituency in which he and the candidate were enrolled as voters. Since the nomination paper of Sri Narain neither mentions the name of the parliamentary constituency nor specify the assembly constituency to which the serial number given therin relates, it was clearly defective. In the absence of the names of parliamentary and assembly constituencies it was not possible for the Returning Officer to satisfy himself that the names and electoral roll numbers of the candidate and his proposer in the nomination paper were the same as those entered in the electoral roll as required by sub-section 4 of S. 33 of the Representation of the People Act. This defect in the nomination paper also cannot be regarded to be of a non-substantial character. The omission to give the name of the constituency and other particulars as required by rule (4) is equivalent to give no particulars at all. This is not a case of any clerical or technical error. Since the proposer had failed to comply with the mandatory provisions of S. 33 of the Representation of the People Act read with rule 4 of the Rules the nomination paper of Sri Narain cannot be said to be improperly rejected and it was also liable to be rejected for omission to specify the parliamentary and assembly constituency in which Sri Narain was enrolled as a voter.

Issue No. 6:—

This issue was not pressed.

Issue No. 8:—

There are no grounds for allowing special costs to the respondent and the issue is decided in the negative.

Issue No. 9:—

As a result of the above findings the petition is dismissed. The petitioner shall pay Rs. 300/- as costs to the respondent.

(Sd.) C. JACOB,
Election Tribunal, Jaipur.

Pronounced in the open court, this 5th day of December, 1957.

(Sd.) C. JACOB,
Election Tribunal, Jaipur.

AGARWAL.

[No. 82/370/57/15230.]

By Order,
DIN DAYAL, Under Secy.